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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/812,349	03/20/2001	Nick J. Huige	661005.90951	1593
26710 7	7590 11/21/2002			
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040			EXAMINER	
			SHERRER, CURTIS EDWARD	
MILWAUKEE, WI 53202-4497			ART UNIT	PAPER NUMBER
			1761	
			DATE MAILED: 11/21/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner Curls E Sherrer Total	·		H S	~ &					
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3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) Other:	2) Notice of Draftsperson's Patent Drawing Review (PTO-948	5) Notice	• • • • • • • • • • • • • • • • • • • •						

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 1-9 and 30 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney (people.cornell.edu/page/bjm10/blort/Drake.htm).

Maloney teaches that, beginning as early as the 16th century, "wort would be cleared with the aid of oak boughs added to steep for a time and removed before the boil." (Bottom of page 1). While Maloney does not teach that the oak was added in chip form, it is notoriously well

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known to use oak in chip form, when adding it in a brewing process. It would have been obvious to those of ordinary skill in the art to add the oak of Murphy in the form of chips because in this form, it is more easily transported and extracted by the wort.

With regard, to the specific type of oak, i.e., American or French, toasted or untoasted, these are the most commonly available and notoriously well known wood chips for brewers and therefore it would have been obvious to those of ordinary skill in the art to add these chips as the oak ingredient as taught by Murphy.

Applicants' attention is invited to *In re Levin*, 84 U.S.P.Q. 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 U.S.P.Q. 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 U.S.P.Q. 221.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the

Page 4

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organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Curtis E. Sherrer

Primary Examiner

November 14, 2002

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Curtis E. Sherrer Primary Examiner November 14, 2002